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[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

**DECISION**  
Case #: MPA - 175418

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**PRELIMINARY RECITALS**

Pursuant to a petition filed on July 8, 2016, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability regarding Medical Assistance (MA), a hearing was held on August 24, 2016, by telephone.

The issue for determination is whether the petitioner's appeal is timely.

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, WI 53703

By: [REDACTED] RN BSN  
Division of Health Care Access and Accountability  
PO Box 309  
Madison, WI 53701-0309

**ADMINISTRATIVE LAW JUDGE:**

Corinne Balter  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. The petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On April 22, 2016 the petitioner's provider submitted a prior authorization request for 28 hours per week of personal care worker time. The provider also requested 14 hours per week of PCW travel time and 24 hours per year of as needed PCW time.

3. On May 18, 2016 the Department sent the petitioner a letter stating that they modified the prior authorization request, and approved 22.5 hours per week of PCW time. They approved the travel time and as needed time as requested. The notice specifically stated in bold in several places that the deadline to appeal the Department's modification and for the Division of Hearings and Appeals to receive the petitioner's appeal was July 2, 2016.
4. On July 21, 2016 the Division of Hearings and Appeals received the petitioner's Request for Fair Hearing by fax.

### **DISCUSSION**

DHA can only hear cases on the merits if there is jurisdiction to do so. There is no jurisdiction if an appeal is untimely. An appeal concerning MA is untimely if it is not received by DHA within 45 days of the date of the action being appealed. See, 42 C.F.R. § 431.221(d); Wis. Stat. § 49.45(5); Wis. Admin. Code § DHS 104.01(5)(a)3; Wis. Admin. Code § HA 3.05(3). A Hearing request that is not received within the 45-day time period must be dismissed for lack of jurisdiction. Wis. Admin. Code § HA 3.05(4)(e).

In this case the petitioner's 45 day appeal deadline was July 2, 2016. The Division of Hearings and Appeals did not receive her request until July 21, 2016. This is well beyond her 45 day deadline, and I am without jurisdiction to decide this case on the merits.

Even if I had jurisdiction I would decide that the Department's modification was correct. The Department approved 95% of what the petitioner requested. The only portion denied was 1.5 hours per week of PCW time. They approved 22.5 hours per week of PCW time, 14 hours per week of travel time, plus the requested as needed time. The petitioner's daughter testified that the petitioner lays there in the morning for about 10 minutes before she can get going. She further testified that she had to do everything for her mother including 4 meals per day, cooking, shopping, cleaning, paying bills, and all other household tasks. Perhaps these areas could make up the 1.5 hours per week of PCW denied; however the problem is that many of these tasks are simply not covered by the MA program. The MA program only covers basic and necessary medical care. The petitioner lives alone is only entitled to 1/3 of total ADL time for these incidental tasks. The Department allowed this time.

Finally, I note that the petitioner is also eligible and receives additional services through the IRIS waiver program. IRIS may be able to cover some of additional time for these tasks that are not covered through MA card service. If the petitioner would still like to pursue an appeal regarding this modification, her provider may submit a PA amendment requesting the additional 1.5 PCW hours each week.

### **CONCLUSIONS OF LAW**

The petitioner appeal is untimely.

**THEREFORE, it is**

**ORDERED**

That the petition is dismissed.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

## **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 12th day of September, 2016

\s \_\_\_\_\_  
Corinne Balter  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on September 12, 2016.

Division of Health Care Access and Accountability